

PERSONAL INCOME TAX S CORPORATIONS

STATUTORY PROVISIONS

Title 30, Delaware Code, Chapters 11 and 19

COLLECTION/ADMINISTRATIVE AGENCY

The tax is administered and collected by the Department of Finance, Division of Revenue.

GENERAL LIABILITY

An S Corporation at the entity level is exempt from corporate taxation, and resident and non-resident shareholders must report their respective share of S distributive income on their individual personal income tax returns. An S corporation that has one or more non-resident shareholders is required to make estimated personal income tax payments on behalf of its non-resident shareholders. S corporations that conduct business in more than one state must allocate and apportion their income among the respective states.

TAX RATES

Same as personal income tax rates. Estimated payments made on behalf of non-resident shareholders are made at the top marginal rate of 5.95%.

FILING PROCEDURES

The income year of an S corporation is the same as the taxable year for which the corporation reports for Federal purposes. The final return is due on or before the first day of the fourth month following the close of the taxable year for the corporation. Request for automatic extension of six months to the Internal Revenue Service for filing the returns will be accepted by the Division of Revenue up to the 16th day beyond the date granted by the Internal Revenue Service. Additional extensions granted by the Internal Revenue Service will be accepted by the Division of Revenue up to the 16th day beyond the date granted by the Internal Revenue Service. Copies of all extensions granted by the Internal Revenue Service must be attached to the Delaware final return.

The corporation is responsible for making estimated payments of personal income tax for non-resident shareholders based on the non-residents' share of the S corporation's distributive income. Estimated payments are paid throughout the year on a quarterly basis.

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The first tentative return, covering estimated income tax liability for the current income year, must be filed with the Division of Revenue on or before April 1 of the current income year for calendar-year taxpayers. In the case of fiscal year corporations, the first tentative return is due on or before the first day of the fourth month of the current income year. Interest is calculated at 1.5% per month for failure to timely pay estimated tax. Provided that the current year's estimated tax liability was timely filed and equal to at least 100% of the previous year's tax liability, there is no penalty for underpayment of estimated tax. Corporations whose Delaware taxable income was \$200,000 or more in any of the last three preceding taxable years must make tentative payments equal to 80% of the current year's tax liability.

PAYMENT DATES

Due April 1, (or first day of 4th month of fiscal year) 50% of the estimated tax is due on the first tentative payment, using form 1100P-1.

Due June 15, (or 15th day of 6th month of fiscal year) 20% of the estimated tax is due on the second tentative payment, using form 1100P-2.

Due September 15, (or 15th day of 9th month of fiscal year) 20% of the estimated tax is due on the third tentative payment, using form 1100P-3.

Due December 15, (or 15th day of 12th month of fiscal year) 10% of the estimated tax is due on the fourth tentative payment, using form 1100P-4.

PENALTIES

Failure to timely file the required tax return will result in a late filing penalty of 5% per month to a maximum of 50% of the amount of tax due, plus interest of 1% per month from the due date of the payment. Failure to pay the amount of tax shown to be due will result in a failure to pay penalty of 1/2% per month up to a maximum of 25% of the amount of tax unpaid. A negligence penalty of 20% of the amount of the deficiency or a penalty of 40% may be imposed if such deficiency is due to a substantial understatement of the tax. A fraud penalty of 75% where any part of the deficiency is due to fraud, may also be imposed. Failure to pay estimated tax will result in a 1.5% per month penalty on the amount of underpayment of tax. A failure to pay penalty is also assessed for failing to pay the full tax due when the final return is filed in the amount of 1/2% per month. (For tax periods beginning on or after January 1, 2007, the failure-to-pay penalty rate shall be increased from 1/2% to 1% per month and interest assessed shall be reduced from 1% per month to 1/2% per month.)